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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,903	01/25/2000	Michael Lynch	LYNM-002	7799

7590

09/23/2003

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EXAMINER

NINO, ADOLFO

ART UNIT PAPER NUMBER

2831

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/490,903

Applicant(s)

LYNCH, MICHAEL

Examiner

Adolfo Nino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Tipsord et al. (US 2,871,282).

Regarding claim 1 (Twice Amended), Tipsord et al. disclose an apparatus (20) for protecting animals from contacting power lines comprising: a cylindrical member (20) for engaging a wire (not marked, but clearly seen in figs. 1, 4) comprising a notch (col. 3, lines 50-56) to accommodate an insulator; and securing means (50 in fig. 6) for securing said cylindrical member to said wire (col. 3, lines 45-47). **Note** that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 2, Tipsord et al. disclose an apparatus (20) as described in claim 1 wherein said cylindrical member (20) comprises a dielectric material (col. 2, line 31).

Regarding claim 3, Tipsord disclose an apparatus (20) as described in claim 2 wherein said dielectric material comprises a polymer material (col. 2, line 31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 4 (Amended) is rejected under 35 U.S.C. 103(a) as being unpatentable over Tipsord et al. (US 2,871,282) in view of Stirn (US 3,251,161). Tipsord et al. disclose an apparatus (20) as described in claim 1 **but do not disclose** said securing means comprises at least one helical member for wrapping around said wire. Stirn teaches that it is known have at least one helical member for wrapping around a wire as set forth at column 2, lines 29-33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one helical member for wrapping around a wire, as taught by Stirn in order to prevent relative axial movement between the securing means and the wire and in turn the apparatus.

Claim 6 (Amended) is rejected under 35 U.S.C. 103(a) as being unpatentable over Tipsord et al. (US 2, 871,282) in view of Stirn (US 3,251,161) as applied to claim 4 above and further in view of Donoho et al. (US 5,433,029). Tipsord et al. as modified by Stirn discloses an apparatus (20) as described above with respect to claim 4 **except for** further comprising a spike disposed perpendicular to a longitudinal axis of said

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cylindrical member. Donoho et al. teach that it is known to have a spike disposing perpendicular to a longitudinal axis of a cylindrical member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a spike disposing perpendicular to a longitudinal axis of said cylindrical member as taught by Donoho et al., since Donoho et al. state at column 1, lines 8-16 that such a modification would prevent birds from landing or perching on a wire.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Response to Arguments

Applicant's arguments filed July 19, 2003 have been fully considered but they are not persuasive.

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Regarding Applicant's argument found in page 2 in the REMARKS section of Paper No. 14, that the term "notch" as used by the Applicant to be a transverse cutout in a cylindrical member is not found, or even suggested in Tipsord et al., the Examiner would like to refer to column 3, lines 50-56 and figure 8 where it reads/shows a transverse cutout (formed by slots 54, 55, 56 shown in fig. 8) in cylindrical member (reference 24).

Moreover, the Applicant's argument, found at the top of page 3 in the REMARKS section, that the so-called notch is only a drawing artifact in that an "attaching flange" (ref.26) protrudes down from one side of the opening and merely appears to be a notch is confusing to the Examiner because the Examiner never pointed to flange 26 to be the notch.

Regarding that the Applicant noted that the Examiner found allowable subject matter in Claim 5, as admitted in Paper 10, the Examiner would like to note top of page 2 of Paper 12 where it reads that such indication have been found unpatentable in view of Tipsord et al. (US 2,871,282).

Regarding Applicant's argument, found at the bottom of page 3 in the REMARKS section, where it reads that the Applicant does not admit that Tipsord discloses a notch, but even if the one attachment flange could be construed as forming a notch, any notch disclosed by Tipsord is not akin to the Applicant's invention where it claims a notch for accommodating an insulator, the Examiner respectfully traverses such argument. First, the Examiner NEVER pointed to the one attachment flange as being the notch, and second, it has been held that a recitation with respect to the manner in which a claimed

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apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding Applicant's argument, found at page 4 in the REMARKS section, concerning claim 4 rejection under 35 USC § 103(a) that such rejection cannot be held obvious in light of Applicant's showing that claim 1 is non-obvious, the Examiner would like to refer to the above responses regarding claim 1.

Regarding Applicant's argument, found at the bottom of page 5 in the REMARKS section, that reads that the reason for not allowing the present application to issue is because of the Examiner's perception that claim 1 is "too broad" is inaccurate, incorrect and untrue. The reason for which the present application is found unpatentable is because the cited prior art anticipates the claims as noted above. Moreover, the Examiner has NOT attempted to distort Tipsord in any way, shape or form. This is clearly proven by the above respectfully responses made by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adolfo Nino whose telephone number is (703) 305-1071. The examiner can normally be reached on M-F (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A Reichard can be reached on (703) 308-3682. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AN

Dean A. Reichard 9/21/03
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